

**BEFORE THE STATE CORPORATION COMMISSION
OF THE STATE OF KANSAS**

STATE CORPORATION COMMISSION

SEP 02 2008



In the Matter of the Petition of Sprint)
Communications Company, L.P., Sprint)
Spectrum L.P., and Nextel West Corp., d/b/a)
Spring, to Conduct General Investigation into)
the Intrastate Access Charges of United)
Telephone Company of Kansas, United)
Telephone Company of Eastern Kansas, United)
Telephone Company of South Central Kansas,)
and United Telephone Company of)
Southeastern Kansas, d/b/a Embarq.)

Docket No. 08-GIMT-1023-GIT

STAFF COMMENTS

The Staff of the State Corporation Commission of the State of Kansas (Staff and Commission, respectively) submits these comments for the Commission's consideration:

1. On May 16, 2008, Sprint filed a petition requesting the Commission review Embarq's charges for switched access and reduce the charges to parity with interstate access charges. Embarq has requested the petition be dismissed, and both Sprint and AT&T have filed additional pleadings asking the Commission consider the matter.

2. The Commission has the authority to review the intrastate access charges of Embarq as Sprint requests. In Docket No. 01-GIMT-082-GIT, the Commission determined that it has authority to require additional access reductions for companies that have elected price cap regulation.¹

3. As the Commission is aware, Kansas is one of a few states taking steps to bring intrastate and interstate access charges into parity. Given this fact, Staff has been particularly

¹ Order, Docket No. 01-GIMT-082-GIT, ¶ 15, May 18, 2001.

interested in the FCC's proceeding to develop a unified intercarrier compensation scheme.² Staff participated in the development of the Missoula Plan and has filed comments with the FCC supporting the plan. All eyes are on the FCC and it is expected that the FCC may overhaul intercarrier compensation by November 5 of this year. The FCC, in response to a strongly-worded decision of the D.C. Circuit Court of Appeals, is required to provide the Court with new legal rationale justifying its current intercarrier payment rules that govern ISP bound traffic or see its interim rules governing ISP compensation rules vacated on November 6, 2008.³ The FCC has suggested it will not only respond to the Court but provide comprehensive intercarrier compensation reform by that date. Staff suggests that given the stern directive of the Court⁴, the FCC is likely to address intercarrier compensation in some manner by November 5, 2008. Additionally, AT&T and Embarq have petitions for waiver or forbearance related to intercarrier compensation before the FCC. While it may not be prudent for the Commission to dismiss the petition in this matter without at least some preliminary review, it may be wise to delay review until after November 5, 2008. This will allow parties to use time more judiciously and tailor comments in accordance with the outcomes of the national scheme that may be forthcoming from the FCC. Staff suggests that the Commission set this matter for a prehearing conference in December 2008 to discuss outstanding issues and status of this request in light of the outcome of the November 5 deadline.

4. If the Commission wishes to move forward at this time, Staff suggests the Commission may wish to review the request in light of public interest issues it historically found important in considering access charge reductions in Kansas. In Docket No. 01-GIMT-082-GIT

²*In the Matter of Developing a Unified Intercarrier Compensation Regime*, Federal Communications Commission CC Docket No. 01-92.

³*IN RE: Core Communications, Inc.* 531 F.3d 849 (D.C. Cir., 2008).

⁴*IN RE: Core Communications, Inc.* 531 F.3d 849 (D.C. Cir. 2008), p. 24. The Court has made clear that it will not grant an extension.

the Commission found parity between interstate and intrastate access charges was reasonable because it accomplished several goals, including promoting fair competition between incumbent and new firms entering the Kansas market, protecting universal service⁵, and could be accomplished while keeping local rates at an affordable level of \$17 for rural areas and \$21 for urban areas.⁶

5. The Commission also acknowledged that interstate and intrastate parity may not always be a primary goal. As the Commission indicated in its Docket 01-GIMT-082-GIT, the Kansas Legislature relied on the Telecommunications Strategic Planning Committee's (TSPC) report to craft the Kansas Telecommunications Act including those provisions of the Act relating to access charges.⁷ To emphasize the importance of cautiously and judiciously weighing competing interests, the Commission quoted the TPSC when it said, “. . . the resolution of transitional issues will be difficult and require that competing objectives be addressed in an interrelated manner.”⁸

6. At this time Staff opines that while the Commission may have found parity between intrastate and interstate access charges to be a priority in 2001, the factors that drove that policy may no longer be the appropriate balance of competing objectives in 2008. For instance, one issue that has evolved is industry pricing methodologies. Both long distance and wireless carriers have moved toward nationwide pricing. Thus, an access charge reduction in Kansas is unlikely to lead to significant rate changes in either wireless or long distance charges for Kansas because of the dilution the savings undergoes when considered as part of a

⁵Order, Docket No. 01-GIMT-082-GIT, ¶ 30, September 25, 2001.

⁶Order, Docket No. 01-GIMT-082-GIT, ¶ 34, September 25, 2001.

⁷Order, Docket No. 01-GIMT-082-GIT, ¶ 9, May 18, 2001.

⁸Id.

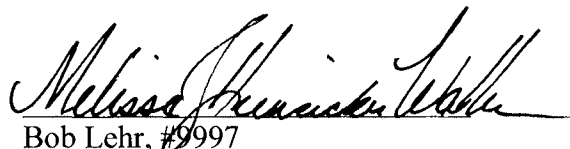
nationwide pricing strategy. There are likely to be other changes that will affect the balance of issues in determining the public interest at this time.

7. Staff suggests that should the Commission decide it is appropriate to evaluate additional access charge reductions that it will also need to consider if and how lost revenue will be recovered by Embarq. If the Commission determines that lost revenue should be recovered, Kansas consumers will solely bear the cost through higher local rates or increased Kansas Universal Service Assessments

8. If the Commission chooses to move forward prior to November 5, 2008, Staff suggests that the Commission set this matter for a prehearing conference. Parties should be prepared to enumerate issues to be addressed, discuss the procedure to be utilized and determine a schedule for proceeding in this docket.

WHEREFORE, Staff requests the Commission consider its comments and for any further relief the Commission deems just and proper.

Respectfully submitted,



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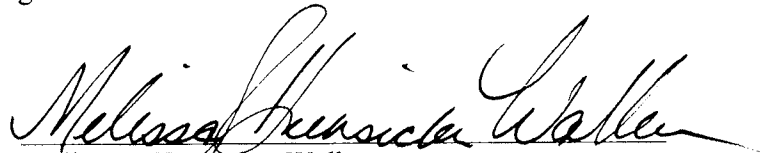
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VERIFICATION

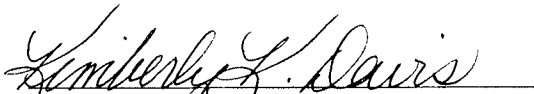
STATE OF KANSAS)
)
COUNTY OF SHAWNEE) SS:

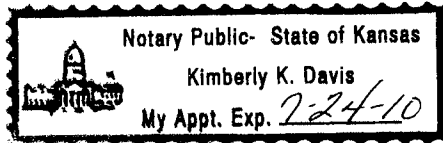
Melissa J. Hunsicker Walburn, of lawful age, being first duly sworn upon oath states:

That she is the attorney for the Corporation Commission Staff in this matter; that she has read and is familiar with the foregoing Staff Comments and that the statements made therein are true and correct to the best of her information, knowledge and belief.


Melissa J. Hunsicker Walburn

Subscribed and sworn to before me this 2nd day of September, 2008.


Notary Public



My appointment expires: July 24, 2010

CERTIFICATE OF SERVICE

08-GIMT-1023-GIT


I, the undersigned, hereby certify that a true and correct copy of the above and foregoing Staff Comments was placed in the United States mail, postage prepaid, or hand-delivered this 2nd day of September, 2008, to the following:

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